SENATE DOCKET, NO. 996 FILED ON: 1/20/2011

SENATE . . . . . No. 885

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act to combat recidivist drunk driving..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bruce E. Tarr	☐ *[District]* ☐
Benjamin Swan	*11th Hampden*

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SENATE . . . . . No. 885

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 885) of Bruce E. Tarr and Benjamin Swan for legislation to combat recidivist drunk driving. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *1819* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act to combat recidivist drunk driving..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 90, Section 23, paragraph two, is amended by striking the entire paragraph and replacing it with the following:

"Any person convicted of operating a motor vehicle after his license to operate has been suspended or revoked pursuant to a violation of paragraph (a) of subdivision (1) of section twenty-four, or pursuant to section twenty-four D, twenty-four E, twenty-four G, twenty-four L, or twenty-four N of this chapter, or pursuant to subsection (a) of section eight, or pursuant to a violation of section eight A or section eight B of chapter ninety B, or after notice of such suspension or revocation of his right to operate a motor vehicle without a license has been issued and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or the issuance to him of a new license to operate, or after his license to operate has been suspended or revoked pursuant to a substantially similar law in another state, or, in the case of a person operating a motor vehicle without obtaining a license, any person convicted of operating a motor vehicle after a violation of paragraph (a) of subdivision (1) of section twenty-four, or pursuant to section twenty-four D, twenty-four E, twenty-four G, twenty-four L, or twenty-four N of this chapter, or pursuant to subsection (a) of section eight, or pursuant to a violation of section eight A or section eight B of chapter ninety B, or after a violation of a substantially similar law in another state, shall be punished by a fine of not less than three thousand and not more than twenty thousand dollars and by imprisonment in a house of correction for not less than one hundred and twenty days and not more than five years;

20 provided, however, that the sentence of imprisonment imposed upon such person shall not be
21 reduced to less than one hundred and twenty days, nor suspended, nor shall any such person be
22 eligible for probation, parole, or furlough or receive any deduction from his sentence for good
23 conduct until he shall have served one hundred and twenty days of such sentence; provided,
24 further, that the commissioner of correction may, on the recommendation of the warden,
25 superintendent or other person in charge of a correctional institution, or of the administrator of a
26 county correctional institution, grant to an offender committed under this paragraph a temporary
27 release in the custody of an officer of such institution for the following purposes only: to attend
28 the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or
29 psychiatric services unavailable at said institution; or to engage in employment pursuant to a
30 work release program. The provisions of section eighty-seven of chapter two hundred and
31 seventy-six shall not apply to any person charged with a violation of this paragraph. Prosecutions
32 commenced under this paragraph shall not be placed on file or continued without a finding."

33 Section 2. Chapter 90, Section 24(1)(a)(1), paragraphs 4 through 7 shall be
34 stricken and replaced by the following paragraphs:

35 If the defendant has been previously convicted or assigned to an alcohol or
36 controlled substance education, treatment, or rehabilitation program by a court of the
37 commonwealth or any other jurisdiction because of a like violation preceding the date of the
38 commission of the offense for which he has been convicted, the defendant shall be punished by a
39 fine of not less than nine hundred nor more than fifteen thousand dollars and by imprisonment
40 for not less than ninety days nor more than three and three-quarters years; provided, however,
41 that the sentence imposed upon such person shall not be reduced to less than forty-five days, nor
42 suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any
43 deduction from his sentence for good conduct until such person has served forty-five days of
44 such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the
45 sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen
46 hundred and ninety-three; provided, further, that the commissioner of correction may, on the
47 recommendation of the warden, superintendent, or other person in charge of a correctional
48 institution, or the administrator of a county correctional institution, grant to an offender
49 committed under this subdivision a temporary release in the custody of an officer of such
50 institution for the following purposes only: to attend the funeral of a relative; to visit a critically
51 ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to
52 engage in employment pursuant to a work release program; or for the purposes of an aftercare
53 program designed to support the recovery of an offender who has completed an alcohol or
54 controlled substance education, treatment or rehabilitation program operated by the department
55 of correction; and provided, further, that the defendant may serve all or part of such forty-five
56 day sentence to the extent such resources are available in a correctional facility specifically
57 designated by the department of correction for the incarceration and rehabilitation of drinking
58 drivers.

59 If the defendant has been previously convicted or assigned to an alcohol or
60 controlled substance education, treatment, or rehabilitation program by a court of the
61 commonwealth, or any other jurisdiction because of a like offense two times preceding the date
62 of the commission of the offense for which he has been convicted, the defendant shall be
63 punished by a fine of not less than one thousand seven hundred and fifty nor more than twenty-
64 five thousand dollars and by imprisonment for not less than three hundred days nor more than
65 four and one-half years or by a fine of not less than one thousand seven hundred and fifty nor
66 more than twenty-five thousand dollars and by imprisonment in the state prison for not less than
67 four and one-half years nor more than nine years; provided, however, that the sentence imposed
68 upon such person shall not be reduced to less than two hundred and fifty days, nor suspended,
69 nor shall any such person be eligible for probation, parole, or furlough or receive any deduction
70 from his sentence for good conduct until he shall have served two hundred and fifty days of such
71 sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the
72 sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen
73 hundred and ninety-three; provided, further, that the commissioner of correction may, on the
74 recommendation of the warden, superintendent, or other person in charge of a correctional
75 institution, or the administrator of a county correctional institution, grant to an offender
76 committed under this subdivision a temporary release in the custody of an officer of such
77 institution for the following purposes only: to attend the funeral of a relative, to visit a critically
78 ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to
79 engage in employment pursuant to a work release program; or for the purposes of an aftercare
80 program designed to support the recovery of an offender who has completed an alcohol or
81 controlled substance education, treatment or rehabilitation program operated by the department
82 of correction; and provided, further, that the defendant may serve all or part of such two hundred
83 and fifty days sentence to the extent such resources are available in a correctional facility
84 specifically designated by the department of correction for the incarceration and rehabilitation of
85 drinking drivers.

86 If the defendant has been previously convicted or assigned to an alcohol or
87 controlled substance education, treatment, or rehabilitation program by a court of the
88 commonwealth or any other jurisdiction because of a like offense three times preceding the date
89 of the commission of the offense for which he has been convicted the defendant shall be
90 punished by a fine of not less than three thousand nor more than fifty thousand dollars and by
91 imprisonment for not less than four years nor more than five years, or by a fine of not less than
92 three thousand nor more than fifty thousand dollars and by imprisonment in the state prison for
93 not less than five years nor more than ten years; provided, however, that the sentence imposed
94 upon such person shall not be reduced to less than two years, nor suspended, nor shall any such
95 person be eligible for probation, parole, or furlough or receive any deduction from his sentence
96 for good conduct until such person has served two years of such sentence, unless otherwise
97 sentenced to an intermediate sanction as promulgated by the sentencing commission established
98 in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three;

99 provided, further, that the commissioner of correction may, on the recommendation of the
100 warden, superintendent, or other person in charge of a correctional institution, or the
101 administrator of a county correctional institution, grant to an offender committed under this
102 subdivision a temporary release in the custody of an officer of such institution for the following
103 purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain
104 emergency medical or psychiatric services unavailable at said institution; to engage in
105 employment pursuant to a work release program; or for the purposes of an aftercare program
106 designed to support the recovery of an offender who has completed an alcohol or controlled
107 substance education, treatment or rehabilitation program operated by the department of
108 correction; and provided, further, that the defendant may serve all or part of such two years
109 sentence to the extent that resources are available in a correctional facility specifically designated
110 by the department of correction for the incarceration and rehabilitation of drinking drivers.

111 If the defendant has been previously convicted or assigned to an alcohol or
112 controlled substance education, treatment or rehabilitation program by a court of the
113 commonwealth or any other jurisdiction because of a like offense four or more times preceding
114 the date of the commission of the offense for which he has been convicted, the defendant shall be
115 punished by a fine of not less than five thousand nor more than one hundred and twenty-five
116 thousand dollars and by imprisonment for not less than six and one-half years or by a fine of not
117 less than five thousand nor more than one hundred and twenty-five thousand dollars and by
118 imprisonment in the state prison for not less than six and one-half years nor more than twelve
119 and one-half years; provided, however, that the sentence imposed upon such person shall not be
120 reduced to less than five years, nor suspended, nor shall any such person be eligible for
121 probation, parole, or furlough or receive any deduction from his sentence for good conduct until
122 he shall have served five years of such sentence, unless otherwise sentenced to an intermediate
123 sanction as promulgated by the sentencing commission established in chapter four hundred and
124 thirty-two of the acts of nineteen hundred and ninety-three; provided, further, that the
125 commissioner of correction may, on the recommendation of the warden, superintendent, or other
126 person in charge of a correctional institution, or the administrator of a county correctional
127 institution, grant to an offender committed under this subdivision a temporary release in the
128 custody of an officer of such institution for the following purposes only: to attend the funeral of a
129 relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services
130 unavailable at said institution; to engage in employment pursuant to a work release program; or
131 for the purposes of an aftercare program designed to support the recovery of an offender who has
132 completed an alcohol or controlled substance education, treatment or rehabilitation program
133 operated by the department of correction; and provided, further, that the defendant may serve all
134 or part of such five years sentence to the extent that resources are available in a correctional
135 facility specifically designated by the department of correction for the incarceration and
136 rehabilitation of drinking drivers.

137 Section 3. Chapter 90 Section 24(1)(a)(1), paragraph 1 shall be amended by
138 adding “but in no case shall the defendant receive less than ten days’ imprisonment.”